

MEMORANDUM

September 18, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: BRANDI M. MOORE
Senior Associate County Counsel
Government Services Division

RE: Raul Hernandez v. Los Angeles County Business License Commission,
et al.
Los Angeles Superior Court, Case No. BS093897

DATE OF
INCIDENT: July 7, 2004

AUTHORITY
REQUESTED: \$56,500

COUNTY
DEPARTMENT: Business License Commission

CLAIMS BOARD ACTION:



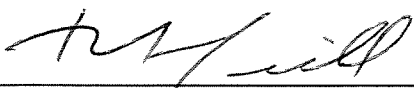
Approve



Disapprove



Recommend to Board of
Supervisors for Approval



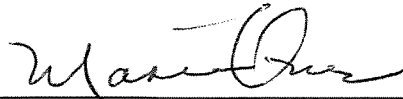
ROCKY A. ARMFIELD

, Chief Administrative Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on October 2, 2006

SUMMARY

This is a recommendation to settle a lawsuit brought against the Los Angeles County Business License Commission, the Los Angeles County Business License Appeals Board, and the Los Angeles County Treasurer and Tax Collector, which arises from the denial of a business license renewal and includes allegations of arbitrary and capricious behavior resulting in an abuse of discretion.

The County would pay the sum of \$56,500 under the proposed settlement, inclusive of all attorneys' fees.

LEGAL PRINCIPLES

Pursuant to state law and local ordinance, the Treasurer and Tax Collector accepts and processes applications for business licenses. The Business License Commission ("Commission") conducts hearings and makes factual determinations based on the evidence presented. The evidence must substantially support the findings. For certain types of businesses, such as peddlers, the Commission conducts a hearing only if one or more departments recommends denial of a license or license renewal. Upon presentation of the evidence, the Commission makes a determination as to whether to uphold or overrule the department's recommendation.

The Commission is held liable if its determination to uphold a recommendation to deny is arbitrary or capricious, or if it lacks substantial justification, or if the basis for the decision is unconstitutional. If a violation is established, the Commission may be responsible for the individual's attorneys' fees for bringing the lawsuit.

SUMMARY OF FACTS

On December 15, 2004, Raul Hernandez, a catering truck operator previously licensed by the Commission, filed a Petition for Writ of Administrative Mandamus seeking monetary damages and an order directing the Commission to reissue a license to operate his catering truck. Renewal of the license was denied by the Commission based upon Mr. Hernandez's failure to comply with Los Angeles County Code section 7.62.070, as evidenced by one citation dated November 7, 2003. That section provides that a vending truck cannot remain in the same location for more than 30 minutes during any three-hour period.

At issue in the litigation is the constitutionality of section 7.62.070 and whether the Business License Commission may base the denial of a license solely on a violation of the so-called 30-minute rule in the absence of a criminal conviction of the charge.

The validity of section 7.62.070 was also the subject of a related criminal matter, although one not involving Mr. Hernandez, wherein a criminal court judge found the section unconstitutional. That decision was subsequently overturned by a three-judge panel in the Appellate Division of the Superior Court.

Additionally, Mr. Hernandez claims exemption from Chapter 7.62 based on section 7.62.050(b), as a merchant with a fixed place of business, on the basis that his warehouse is within the unincorporated area of the County.

DAMAGES

Mr. Hernandez is claiming lost profits associated with his inability to conduct his business from July 2004 to the present. He is also claiming lost assets resulting from the forced sale of his equipment. Should this matter proceed, we anticipate Mr. Hernandez will offer evidence of damages as follows:

Lost earnings July - December 2004:	\$ 31,413.00
Lost earnings 2005:	\$ 71,624.00
Lost earnings January - June 2006:	\$ 37,200.00
Lost assets:	<u>\$ 21,000.00</u>
Total:	\$161,237.00

Additionally, Mr. Hernandez will claim attorneys' fees in the \$40,000 to \$60,000 range and continuing loss of earnings from June 2006 to the date of trial.

STATUS OF CASE

The hearing in this matter was scheduled for November 17, 2006. A stipulation was submitted to the court requesting a continuance to January 9, 2007, to allow action on this proposed settlement.

EVALUATION

There is no dispute that the basis of the denial was the single citation for violation of the so-called "30-minute rule." A strong likelihood exists that the court will find such a decision unreasonable, since Mr. Hernandez was not convicted on that citation, and he had no prior or subsequent violations of any kind. Moreover, similar local ordinances have recently been challenged in the Superior Courts of other counties.

Additionally, the exemption found in section 7.62.050(b) appears to be vague. Based on the limited published case law on the subject, we believe the provision was enacted to protect merchants who were selling goods from their


fixed location, which may have been of the same or similar type as those sold by itinerant vendors. We will revise Title 7 to reflect that opinion.

A reasonable settlement at this time will avoid further litigation costs and a potential for damages in excess of the proposed settlement amount.

RECOMMENDATION

For all the reasons stated above, we recommend a settlement with Mr. Hernandez in the amount of \$56,500. The Business License Commission, by a majority vote, concurs and supports the settlement recommendation.

APPROVED:



ELIZABETH M. CORTEZ
Assistant County Counsel
Government Services Division

EMC:BMM:ds